

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL LANGROCK,

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

Case No. CV 17-01096 BRO (RAO)

ORDER SUMMARILY
REMANDING CASE TO STATE
COURT AND DENYING
REQUEST TO PROCEED IN
FORMA PAUPERIS AND FOR
APPOINTMENT OF COUNSEL

I. INTRODUCTION

On February 8, 2017, the Court received from Petitioner Michael Langrock (“Petitioner”) a “Notice of Removal Under 28 U.S. Code § 1455, Permission to Proceed in forma Pauperis, Request for Attorney” (the “Notice”). (Dkt. No. 1.)

In his Notice, Petitioner asserts that his constitutional rights under the First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments have been, and continue to be, denied. (Dkt. No. 1 at 4.) Petitioner alleges that he has been appointed constitutionally ineffective counsel in his pending state criminal prosecution in Ventura County Superior Court. (*Id.*) Petitioner also alleges that Ventura County Sheriff’s Department deputies at the jail where Petitioner is

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1 currently incarcerated prevented Petitioner from appearing in court, despite
 2 Petitioner having been ordered by the court to appear. (*Id.* at 5.)

3 In his Notice, Petitioner requests to proceed *in forma pauperis* and also seeks
 4 to have counsel appointed to represent him. (Dkt. No. 1 at 6.)

5 Although Petitioner's Notice states that federal question jurisdiction exists
 6 pursuant to 28 U.S.C. § 1331 (Dkt. No. 1 at 1; *see id.* at 3), a review of the Notice
 7 makes clear that this Court does not have jurisdiction over this state criminal action.

8 **II. REMOVAL OF CRIMINAL PROCEEDINGS FROM STATE COURT**

9 Federal courts are courts of limited jurisdiction, having subject matter
 10 jurisdiction only over matters authorized by the Constitution and statute. *See, e.g.,*
 11 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128
 12 L.Ed.2d 391 (1994). It is this Court's duty always to examine its own subject
 13 matter jurisdiction, *see Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235,
 14 163 L.Ed.2d 1097 (2006), and the Court may remand a case summarily if there is
 15 an obvious jurisdictional issue. *Cf. Scholastic Entm't, Inc. v. Fox Entm't Grp., Inc.*,
 16 336 F.3d 982, 985 (9th Cir. 2003) ("While a party is entitled to notice and an
 17 opportunity to respond when a court contemplates dismissing a claim on the merits,
 18 it is not so when the dismissal is for lack of subject matter jurisdiction.") (omitting
 19 internal citations).

20 Under section 1455,¹

21 [a] defendant or defendants desiring to remove any
 22 criminal prosecution from a State court shall file in the
 23 district court of the United States for the district and
 24 division within which such prosecution is pending a
 25 notice of removal signed pursuant to Rule 11 of the
 26 Federal Rules of Civil Procedure and containing a short

27
 28 ¹ Unless otherwise noted, references to statutes identified only by their section are to
 statutes contained in Title 28 of the United States Code.

1 and plain statement of the grounds for removal, together
 2 with a copy of all process, pleadings, and orders served
 3 upon such defendant or defendants in such action.

4 28 U.S.C. § 1455(a). The notice of removal “shall include all grounds for such
 5 removal.” 28 U.S.C. § 1445(b)(2). A state-court defendant’s “failure to state
 6 grounds that exist at the time of the filing of the notice shall constitute a waiver of
 7 such grounds, and a second notice may be filed only on grounds not existing at the
 8 time of the original notice.” *Id.*

9 Upon a state-court criminal defendant’s filing of a notice of removal, the
 10 district court receiving the notice must examine it promptly, and “[i]f it clearly
 11 appears on the face of the notice and any exhibits annexed thereto that removal
 12 should not be permitted, the court shall make an order for summary remand.” 28
 13 U.S.C. § 1445(b)(4).

14 It is only “[u]nder narrow and limited circumstances [that] state-court
 15 criminal prosecutions may be removed to federal court.” *El v. L.A. Police Dep’t*,
 16 No. CV 16-7013-JAK (PLA), 2016 WL 5419402, at *2 (C.D. Cal. Sept. 27, 2016).
 17 Section 1445 “merely describes the procedural mechanism for removing criminal
 18 cases. It does not provide substantive grounds for removing criminal cases.” *City*
 19 *of North Las Vegas v. Davis*, No. 2:13-cv-00156-MMD-NJK, 2013 WL 2394930, at
 20 *2 (D. Nev. May 30, 2013). Bases for removal of state-court criminal proceedings
 21 are found in sections 1442, 1442a, and 1443.²

22 First, under sections 1442(a) and 1442a, “[a]ny officer of the United States or
 23 its courts, any officer of either House of Congress, or any member of the U.S.
 24 armed forces subject to criminal prosecution may remove such an action if it arises
 25 from acts done under color of such office or status.” *El*, 2016 WL 5419402, at *2.

26 Additionally, under section 1443, a state-court defendant may remove a
 27 criminal prosecution “[a]gainst any person who is denied or cannot enforce in the

28 ² Sections 1442, 1442a, and 1443 apply to removal of both civil and criminal proceedings.

1 courts of such State a right under any law providing for the equal civil rights of
 2 citizens of the United States, or of all persons within the jurisdiction thereof.” 28
 3 U.S.C. § 1443(1). And finally, a state-court defendant may remove a criminal
 4 prosecution “[f]or any act under color of authority derived from any law providing
 5 for equal rights, or for refusing to do any act on the ground that it would be
 6 inconsistent with such law.” *Id.* § 1443(2).

7 **III. DISCUSSION**

8 Petitioner’s Notice fails to show that he has the right to remove this action
 9 pursuant to the statutes he has cited. First, “petitioner does not allege he is a federal
 10 officer being prosecuted for acts performed under color of such authority; thus,
 11 [sections 1442(a) and 1442a] do not provide petitioner the right to remove this
 12 action.” *El*, 2016 WL 5419402, at *2.

13 Removal is also unavailable under 28 U.S.C. § 1443. A notice of removal
 14 invoking section 1443 must satisfy the two-part test stated in *Georgia v. Rachel*,
 15 384 U.S. 780, 788-92, 794-804, 86 S. Ct. 1783, 16 L. Ed. 2d 925 (1966), and *City*
 16 *of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 824-28, 86 S. Ct. 1800, 16 L. Ed.
 17 2d 944 (1966).

18 First, the petitioners must assert, as a defense to the
 19 prosecution, rights that are given to them by explicit
 20 statutory enactment protecting equal racial civil rights.
 21 Second, petitioners must assert that the state courts will
 22 not enforce that right, and that allegation must be
 23 supported by reference to a state statute or a
 24 constitutional provision that purports to command the
 25 state courts to ignore the federal rights.

26 *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998-99 (9th Cir. 2006) (internal
 27 quotations and citations omitted).

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1 Regarding the first requirement, “[c]laims that prosecution and conviction
 2 will violate rights under constitutional or statutory provisions of general
 3 applicability or under statutes not protecting against racial discrimination, will not
 4 suffice.” *Johnson v. Mississippi*, 421 U.S. 213, 219, 95 S. Ct. 1591, 44 L. Ed. 2d
 5 121 (1975). Thus, “[t]hat a removal petitioner will be denied due process of law
 6 because the criminal law under which he is being prosecuted is allegedly vague or
 7 that the prosecution is assertedly a sham, corrupt, or without evidentiary basis does
 8 not, standing alone, satisfy the requirements of [section] 1443(1).” *Id.*

9 Regarding the second requirement, it is “normally require[d] that the denial
 10 be manifest in a formal expression of state law, such as a state legislative or
 11 constitutional provision, rather than a denial first made manifest in the trial of the
 12 case.” *Johnson*, 421 U.S. at 219 (citations and internal quotation marks omitted).

13 Here, Petitioner’s Notice fails both requirements for removal under section
 14 1443. First, while Petitioner states his ethnicity (Dkt. No. 1 at 3), Petitioner does
 15 not assert anywhere in his Notice that his rights against racial discrimination are
 16 being violated. Moreover, Petitioner “point[s] to no formal expression of state law
 17 that prohibits [him] from enforcing [his] civil rights in state court nor [does he]
 18 point to anything that suggests that the state court would not enforce [his] civil
 19 rights in the state court proceedings.” *Patel*, 446 F.3d at 999; *see also D&A*
 20 *Intermediate-Term Mortg. Fund III LP v. Suite*, No. SACV 17-00214-AG (KESx),
 21 2017 WL 548908, at *3 (C.D. Cal. Feb. 9, 2017) (“Defendant has failed to identify
 22 any specific state statute or constitutional provision that commands the state courts
 23 to ignore her federal rights.”). Petitioner’s reference to various alleged
 24 constitutional violations is insufficient to warrant removal. *See People of the State*
 25 *of Cal. v. Sandoval*, 434 F.2d 635, 636 (9th Cir. 1970) (per curiam) (“[I]t is clear
 26 that the rights that [petitioners] assert spring, not from specific statutory grants, but
 27 from the broad protections of the First and Fourteenth Amendments. Such rights
 28 are not within the coverage of section 1443.”).

1 As noted above, a notice of removal must include all grounds for removal,
2 and the failure to do so results in a waiver of grounds existing at the time of the
3 notice's filing that were not included. 28 U.S.C. § 1445(b)(2). Here, Petitioner has
4 failed to "identify any statute or other authority empowering petitioner to remove
5 this criminal action from the state court," and thus Petitioner "has . . . failed to
6 satisfy his burden of establishing that the Court has subject-matter jurisdiction over
7 this action." *El*, 2016 WL 5419402, at *3. "[P]etitioner may not cure this
8 deficiency by filing a second notice of removal stating additional grounds justifying
9 removal," because even if he could identify some authority for removal, "he has
10 now waived the opportunity to do so."³ *Id.* As Petitioner has not established a
11 proper basis for removal, the Court lacks jurisdiction over this matter.

12 **IV. CONCLUSION**

13 For the foregoing reasons, Petitioner is not entitled to removal of his pending
14 state criminal proceedings. IT THEREFORE IS ORDERED that, pursuant to 28
15 U.S.C. § 1455(b)(4), this matter is summarily remanded to the Ventura County
16 Superior Court forthwith. Petitioner's requests to proceed *in forma pauperis* and
17 for the appointment of counsel are DENIED as MOOT.

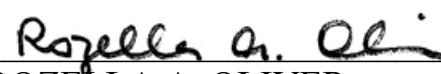
18 IT IS SO ORDERED.

19 DATED: February 24, 2017

20 By:


21 Honorable Beverly R. O'Connell
22 United States District Court Judge

23 Presented by:

24 
25 ROZELLA A. OLIVER
26 UNITED STATES MAGISTRATE JUDGE

27 ³ Petitioner asks the Court to excuse his failure to state all grounds for removal based on
28 good cause. (Dkt. No. 1 at 3, 7.) While a district court may grant relief, if good cause is shown,
for failure to include all grounds for removal, 28 U.S.C. § 1455(b)(2), Plaintiff fails to explain
why good cause exists.